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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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In the Matter of)
)
Amendment of Parts 2 and 15 of the Commission's)
Rules to Further Ensure That Scanning Receivers Do Not)
Receive Cellular Radio Signals)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ET Docket 98-76
RM-9022

To: The Commission

COMMENTS IN SUPPORT OF PROPOSED RULES

The law firm of Hill & Welch fully supports the Commission's efforts to promulgate new scanner rules, as proposed at 63 Fed. Reg. 31684 (June 18, 1998) to ensure that scanners are not capable of intercepting cellular telephone transmissions. In support whereof, the following is respectfully submitted:

1) Hill & Welch is a law firm which represents several cellular carriers in matters before the Commission. On January 14, 1997 Hill & Welch filed a complaint with the Wireless Telecommunications Bureau's Enforcement Division (WTB) to report that a particular model of scanner was capable of intercepting cellular conversations even though the manufacturer had followed the Commission's rules regarding the blocking of cellular frequencies from the spectrum which could be scanned. By letter dated February 4, 1997, the Customer Service Branch of the FCC's Laboratory in Columbia, Maryland advised our office that our letter had been forwarded from the WTB for investigation. At the suggestion of undersigned counsel, the Laboratory requested that, undersigned counsel ship the scanner in question for testing. Our stated concern was that "it appears

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that cellular frequencies are being reflected onto other frequencies either in the scanner or in the environment.”¹

2) While Hill & Welch has not been advised of the status of its January 14, 1997 complaint, we are gratified to learn that the Commission is taking this problem seriously.² The intent federal law and the Commission’s rules has been to prohibit the ability to surreptitiously scan cellular telephone conversations. Cell phone users assume, pursuant to the Electronic Privacy Act of 1986, particularly 18 U.S.C. § 2512,³ and the Commission’s rules, particularly 47 C.F.R. 15.121,⁴ that their conversations are not being intercepted by eavesdroppers. To the extent that cell phone users cannot be sure about the security of their conversations, the cellular telephone industry is damaged by reduced, or even non-use, of the cell phones. We appreciate the attention the Commission is giving

¹ The scanner model in question was able to scan cellular frequencies both in Washington, D.C. and in a mid-western state. It is noted that pursuant to 18 U.S.C. § 2511(2)(a) our cellular clients, and our office as their agent, are able to use scanning equipment as “a necessary incident . . . to the protection of the right or property of the provider of that service.” Because the use of scanning equipment to eavesdrop on cellular phone conversations is hurtful to our clients’ cellular businesses, by causing concern about a lack of privacy on the part of consumers, our clients have an interest in protecting their property rights by using the commercially available scanners to determine their abilities to scan prohibited frequencies.

² The intent in filing the complaint was not to win a legal battle with a large manufacturer, but rather to alert the Commission to a serious problem. As noted at the end of our complaint letter, “there may be a valid explanation for this phenomenon.” It appears that the Commission has concluded that the phenomenon is explicable as a matter of physics, rather than a particular manufacturer’s intent to violate the rules. Hill & Welch is satisfied that the Commission’s instant rulemaking proceeding adequately addresses the issues raised in the complaint letter.

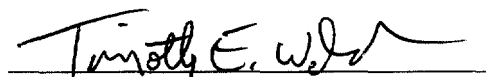
³ 18 U.S.C. § 2512 provides that it is illegal to manufacture frequency scanning equipment which is “primarily useful for the purpose of the surreptitious interception of wire, oral or electronic communications”

⁴ 47 C.F.R. § 15.121 prohibits the manufacture of frequency scanning equipment unless such equipment is “incapable of operating (tuning) . . . within the Cellular Radio Telecommunications Service in Part 22 of this Chapter (cellular telephone bands).”

this matter and we fully support the Commission's efforts to issue new rules which comport with Congressional intent by addressing a non-obvious matter of physics.

Respectfully submitted,

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July 20, 1998



Timothy E. Welch

CERTIFICATE OF SERVICE

I hereby certify that I have this 20th day of July 1998 sent a copy of the forgoing Comments by First-Class United States mail, postage prepaid, to the following:

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